



STATE OF NEW JERSEY

In the Matter of Anthony Lewis,
Correctional Police Officer (S9988V),
Department of Corrections

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-1697

List Removal Appeal

ISSUED: MARCH 8, 2019 (SLK)

Anthony Lewis, represented by Anthony Imbesi, Esq., appeals his removal from the eligible list for Correctional Police Officer (S9988V), Department of Corrections on the basis that he possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Correctional Police Officer (S9988V), which had an May 31, 2017 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant possessed an unsatisfactory criminal background. Specifically, the appointing authority indicated that as a juvenile, the appellant was adjudicated delinquent for a third-degree offense, False Public Alarm in February 2011 and a disorderly person offense, Possession of a Controlled Dangerous Substance Under 50 Grams (marijuana) in October 2015.

On appeal, the appellant highlights that the False Public Alarm offense occurred when he was 12 years old and the marijuana offense took place when he was 17 years old. He presents that these matters were handled in juvenile court, where he was adjudicated delinquent, but both charges were ultimately dismissed by way of adjourned dispositions. The appellant asserts that under State law, juvenile offenses are not considered criminal. Further, even if committed by an adult, the marijuana offense was a disorderly persons offense and not a criminal offense. Therefore, he believes he cannot be removed for an unsatisfactory criminal background. Moreover, the appellant argues that even if these juvenile adjudications

are considered a crime, these incidents do not adversely relate to the position sought. He explains that the first incident was a prank, when he was 12 years old and his classmate pulled a fire alarm. Additionally, the appellant indicates that the second incident occurred when he was 17, where he was a passenger in a vehicle that was pulled over by the police which contained marijuana. He states that this charge was dismissed in juvenile court after he made satisfactory judgment. The appellant argues that these were minor, isolated events and he has been fully rehabilitated as demonstrated by his successful completion of diversionary programs and he has not committed any other offenses. Also, he is currently petitioning the court to have these incidents expunged from his record.

In response, the appointing authority asserts that his marijuana offense, which was disposed through a diversion program, and his violation of a third-degree charge concerning a fire alarm, where he received six months deferred disposition, met its criteria for removal for an unsatisfactory background. It highlights its removal criteria that clearly indicated that 4th degree or higher offenses and juvenile offenses, even those disposed through a diversion program, are grounds for removal.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Civil Service Commission (Commission) to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

N.J.S.A. 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police

Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). Further, in *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement. See *N.J.S.A.* 2C:52-3 and *N.J.S.A.* 2C:52-8.

Additionally, it is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority when requested for purposes of making a hiring decision. However, *N.J.S.A.* 2A:4A-48 provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. Accordingly, the disability arising under *N.J.A.C.* 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal. However, although it is clear that the appellant was never convicted of a crime, he has been arrested. While an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

Further, participation in a diversionary program is neither a conviction nor an acquittal. See *N.J.S.A.* 2C:43-13(d). See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). In *Grill, supra*, the Appellate Division indicated that the diversionary program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into a diversionary program could still be properly considered in removing his name from the subject eligible list. Compare *In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his diversionary program).

N.J.A.C. 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that

an appointing authority's decision to remove his or her name from an eligible list was in error.

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See also, In the Matter of Debra Dygon* (MSB, decided May 23, 2000). With respect to the appellant's current application for expungement, as these offenses were not expunged as of the time the appointing authority made its decision to remove the appellant, any potential expungement is not a factor in this case. Further, as stated above, even if the appellant's record had been expunged at that time, it would not automatically prohibit the appointing authority from rejecting an eligible for a law enforcement position.

In the instant matter, a review of the record indicates that the appointing authority had a valid reason to remove the appellant's name from the list. While the appellant's offense at age 12 is too remote to be considered grounds for removal, the appellant was adjudicated delinquent for possession of marijuana in 2015. Although this charge was for a disorderly persons offense and cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, the fact that the appellant was involved in such activity reflects upon his character and his ability to perform the duties of the position at issue. *See In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002). Further, as stated above, the fact that this incident took place while he was a juvenile and was disposed through a diversionary program, does not mean that it cannot be considered grounds for removal. Moreover, while the appellant argues that this offense was a minor, isolated event that does not relate to the position sought, it cannot be ignored that he engaged in illegal activity involving a controlled dangerous substance. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J.* 567 (1990). The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. Moreover, while the appellant argues that he has been rehabilitated, as this incident took place less than two years prior to the May 31, 2017 closing date, there was insufficient time for him to demonstrate rehabilitation.

Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Correctional Police Officer (S9988V), Department of Corrections eligible list. The Commission notes, however, that with the further passage of time, and absent any

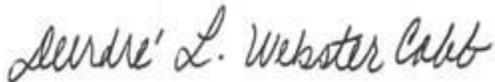
further adverse incidents, the appellant's background as presented in this matter will be insufficient to remove his name from future similar lists.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 6th DAY OF MARCH, 2019



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